

(1985) 04 BOM CK 0018

In the Bombay High Court

Case No : Company Petitions No's. 374 and 375 of 1983

In Re: Kohinoor Mills Co. Ltd. Ex Parte Jay Chemi Colour Industries and Jaysynth Dyechem P. Ltd.

Date of Decision : 04-04-1985

Acts Referred:

Companies Act, 1956 — Section 433

Textile Undertakings (Taking Over of Management) Act, 1983 — Section 8(1)

Citation : (1986) 60 CompCas 55

Hon'ble Judges : N.K. Parekh, J

Bench : Single Bench

Judgement

Parekh, J.—The short point that needs to be decided of the disposal of this petition is whether in view of the fact that the management of Kohinoor Mills Co. Ltd. has been taken over under the Textile Undertakings (Taking Over of Management) Act, 1983 (No. 40 of 1983, this company petition seeking a winding-up of the said company and the appointment of an official liquidator is maintainable.

2. The facts that lead up to this petition are that the Kohinoor Mills Co. Ltd. came to be indebted to the petitioners. The petitioners thereupon served the usual statutory notice calling upon the company to pay up its dues. The requisitions in the notice not being complied with, the petitioners filed this petition in July, 1983. On September 28, 1983, consent terms were arrived at. These consent terms provided that the company would pay to the petitioners the amount by instalments (as provided in the consent terms), and in the event of default of payment of the instalments (as provided therein), the petition to stand admitted. A little later, on October 18, 1983, an Ordinance came to be issued and under the said ordinance, the management of Kohinoor Mills No. 1 was taken over. In the meantime, the company committed default in making payments of the instalments and the petitioners proceeded to insert the necessary advertisement. The petition has now come up for final hearing. By this petition, the petitioners seek and order for the winding up of the said company and the appointment of the official liquidator. The petition is resisted by the company on the ground that

the management having been taken over, the present proceedings are not maintainable. Counsel for the petitioners and counsel for the textile undertaking are agreed that the language of the Ordinance dated October 18, 1983, and the language of the Act No. 40 of 1983 are identical and for the purpose of the disposal of this petition, it will be sufficient to look at the Act.

3. At the hearing of this matter, Mr. Thacker, the learned counsel for the petitioners, urged that it is an admitted position that this petition was filed in July, 1983, i.e., much prior to the Ordinance dated October 18, 1983. That in view of this, the bar provided in section 8 of Chapter IV of the said Act (i.e., the Textile Undertakings (Taking Over of Management) Act, 1983 (No. 40 of 1983), would not apply to these proceedings. Mr. Thacker urged that the relevant portion of section 8(1) of the said Act reads as follows :

"8(1). So long as the management of the textile undertaking of textile company remains vested in the Central Government under this Act, notwithstanding any thing contained in the Companies Act, 1956, or in the memorandum or articles of association of such company -

(c) no proceeding for the winding up of the textile company or for the appointment of a liquidator or receiver in respect thereof shall lie in any court except with the consent of the Central Government".

4. That the words "shall lie" in clause 8(1)(c) can only apply to such proceedings which came to be initiated after the ordinance and/or that the Act came into force, but it could never apply to proceedings which were initiated much prior to the Ordinance or the Act coming into force. Mr. Thacker urged that the word "lie" must be understood in common parlance. That the Random House Dictionary of the English language, inter alia, defined the word "lie" as follows :

"to be sustainable or admissible".

5. That the Concise Oxford Dictionary, sixth edition, at page 625, defined the word "lie", inter alia, as follows :

"be admissible or sustainable".

6. That since this petition was already filed and admitted, the same would not fall within the compass of the words "shall lie", and the question of the provisions of section 8 of the said Ordinance or the Act being attracted or that these proceedings being barred by reason thereof cannot arise.

7. I am unable to accept this contention. The Random House Dictionary, inter alia, defines the word "lie" as to be sustainable. The word "sustainable" in the said dictionary is defined as "to keep it going". What can be kept going is only a proceeding which is initiated or pending. The contention of Mr. Thacker must hence be negatived. The proceedings would clearly be hit by section 8 and the petitioners would be entitled to no relief as prayed.

8. Mr. Thacker urged that the name of the owner is Kohinoor Mills Co. Ltd. while

the name of the undertaking is Kohinoor Mills No. 1. That what was taken over under the ordinance and the Act was the undertaking and not the company. That there was, therefore, nothing to preclude this court from granting the relief in so far as this company was concerned and the petition would, therefore, be maintainable.

9. Mr. Thacker next argued that a similar position had arisen in the case of Podar Mills Ltd. Vs. J.K. Synthetics Ltd., and this court had proceeded to pass an order. That the same ratio must apply to the present case and relief must now be granted on this ground.

10. Now, as regards Mr. Thacker's contention is concerned, in view of the language used in section 8 (reproduced above) the contention must be negatived. As regards the case relied upon by Mr. Thacker is concerned, the facts in that case were that Podar Mills Ltd. had several units at several places. Under the Act, what was taken over was only one unit and all other units of the company situate at various places in the country were left untouched. It was in the light of this that an order had come to be passed in the said matter leaving out the unit taken over under the Act. This is not the position in the present petition for what has been taken over is the management of the entire undertaking. The case cited by Mr. Thacker can be of no assistance to him.

11. In the result, the petition must fail and the same is dismissed with no order as to costs.